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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,063	07/25/2003	John E. Hartman	HAR43 P-300	2218

277 7590 02/16/2005

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,063

Applicant(s)

HARTMAN, JOHN E.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Applicant Arguments, filed 08 NOV 04, with respect to the rejection of claims 1, 10 and 16 under 35 USC 102(b) have been fully considered and are persuasive. The rejection of those claims has been withdrawn, but is set forth again herein including an attempt by examiner to remove any previous obfuscation. Regarding any arguments addressing the dependent claims, these have not been addressed here in particular, but rather, will be addressed upon receipt of Amendment/Arguments in response to this office action. Applicant need only refer back to the response, filed 08 NOV 04, regarding the arguments directed to those dependent claims in response to this rejection. In other words, examiner has only re-addressed the rejection of the independent claims with this action.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 6, 8 – 12 and 14 – 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,981,099 to Dziewulski.
4. Re – claim 1, Dziewulski discloses the invention as claimed including a hanger assembly, e.g., Fig. 9, for hangingly supporting a potted plant, comprising: at least one supporting collar 14

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comprising at least one inner aperture 13 extending therethrough, as through 19—see clarification below—an outer edge 15, a plurality of slots 17 extending inwardly from the outer edge 15 and each having a narrowed throat section and an expanded seat section, as at 16, and a plurality of frusto-conical surfaces in communication with the slots, as between 15 and 13; a plurality of flexible support members 41, 42 slidably received within the plurality of slots; and a plurality of stop members, set forth at col. 3, line 23 (3:23), fixedly connected to the plurality of flexible support members along a length thereof, wherein the stop members are seated within the frusto-conical surfaces of the at least one support collar and prevent downward movement of the supporting collar with respect to the plurality of flexible support members.

Examiner apologizes for any abstruseness of the rejection within the previous office action, mailed 05 AUG 04, and will now attempt to elucidate.

The assertion ‘comprising at least one aperture 13 extending therethrough, as through 19’ should be separated into at least two parts. Firstly, the term ‘aperture’ means an opening, of which 13 is the surrounding sidewall. The term “opening” does not necessarily include a hole extending through an entirety of an object, which is perhaps the reason for Applicant including the phrase ‘extending therethrough’. While this may arguably structurally limit the recitation, to base a rejection upon a reference, it need only include an opening extending through a plane created by the support collar, which Dziewulski discloses. Further, even disregarding this logic and assuming that the opening must pass through an entirety of the hangar assembly, which examiner submits is *not* what is being claimed, what examiner meant to imply in the previous rejection was that provided by way of openings 19, there is such an aperture extending through the entirety of the assembly as claimed. And, therefore, examiner reasserts that the aperture 13

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‘extends therethrough’ via openings 19. Re – the argument that openings 19 are for another intention, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. (*Emphasis added*). *Ex parte Masham*, 2 USPQ2d 1647 (1987). In this case, the prior art, namely Dziwulski, discloses the claimed structural limitations—intended use notwithstanding.

5. Re – claim 2, Dziwulski further discloses the slots snappably receive one or more flexible support members – as anyone who has tried to pull a knot through an aperture smaller than the knot knows, when pulling the knot back out the way it came, the knot ‘snaps’ out.

6. Re – claim 3, Dziwulski further discloses the support members comprise cables or rope – ‘cord’ more specifically, which can easily be construed as rope.

7. Re – claim 4, Dziwulski further discloses wherein the stop members comprise one or more components.

8. Re – claim 5, Dziwulski further discloses the plurality of stop members being crimped, glued, welded or otherwise fixedly attached to the flexible support members.

9. Re – claim 6, Dziwulski further discloses the plurality of stop members being spherically shaped – some knots can easily be construed as spherically shaped.

10. Re – claim 8, Dziwulski further discloses the supporting collar comprises plastic, metal, wood, or any composite or combination thereof, 3:58.

11. Re – claim 9, Dziwulski further discloses a swivel support 43.

12. Re – claims 10 – 12 and 14 – 19, Dziwulski discloses the claimed invention as applied to the above claims.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dziewulski as applied above.

15. Re – claims 7 and 13, Dziewulski discloses the invention substantially as claimed as applied above except for the supporting collar comprising a substantially planar shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the supporting collar comprise a substantially planar shape, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23. In this case, the function remains constant, i.e., supporting a plant.

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Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553 (after April 4, 2005, (571) 272 – 6902). The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421 (after April 1, 2005 (571)272 – 7045. The fax number is (703) 872 – 9306.

bh

2/11/05


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